

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6667 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

FULABHAI R PATEL

Versus

SAIDUKHAN MISRIKHAN PATHAN

Appearance:

MR MI PATEL for Petitioner

MR SK BUKHARI for Respondent No. 1

Mr.ST MEHTA ASST.GOVERNMENT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 15/12/1999

ORAL JUDGEMENT

By means of filing this petition under Article 227 of the Constitution, the petitioner has prayed to issue a writ of certiorari or any other appropriate writ order or directions to quash and set aside order dated November, 10, 1987 rendered by Joint Secretary, Revenue Department (Appeals) Government of Gujarat by which the matter is remanded to the Collector, for taking appropriate decision under the provisions of the Bombay

Prevention of Fragmentation & Consolidation of Holdings Act, 1947 in the light of the observations made therein.

2. The petitioner purchased land admeasuring 42 are and 49 sq.mtrs of Survey No. 273 situated in the sim of Village Dumad Taluka & District Vadodara. Though the petitioner has claimed in the petition that the above referred to land was purchased by him by Regd. Sale Deed he has not produced any evidence in support of his said assertion. Entry no.1944 which was mutated in Revenue records and which is relied upon by the petitioner unequivocally establishes that the petitioner had purchased the above referred to land on October 6, 1965 by oral contract for a consideration of Rs.3025/-. The petitioner has claimed that after certification of entry no.1944 an appeal was filed by the original owner which was rejected by the Competent Authority on December 6, 1966. In the year 1983, the Additional Mamlatdar, Baroda learnt that the sale of the land in favour of the petitioner was in breach of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ('The Act' for short). He therefore issued a notice to the petitioner under Section 9 of the said Act calling upon him to show-cause as to why transfer of the land being contrary to the provisions of the said Act should not be declared to be void. After hearing the petitioner, the Dy. Collector passed an order on April 23, 1984 and declared that the transfer of land in favour of the petitioner was contrary to the provisions of the Act, and was therefore void. According to the petitioner, the Dy. Collector had not afforded reasonable opportunity of being heard to him and therefore he preferred revision application No. SRD 206 of 1984 before the State Government. The State Government allowed the revision application and remanded the matter to the Collector for deciding the same afresh. It may be stated that before filing of the Revision Application, the possession of the land was taken over by the Competent Authority from the petitioner on September 14, 1984.

3. After the remand the petitioner made an application seeking restoration of possession of land but the said application was rejected by the Dy. Collector, Baroda on the ground that after the removed, the case was not decided finally. That order of the Dy. Collector, Baroda was challenged by the petitioner by way of filing revision application No. SRD-134 of 1985 before the State Government. During the pendency of the said revision application, the Dy. Collector by his order dated June 20, 1986 held that the land in dispute was not

declared to be a fragment under the provisions of the Act, nor any notice was served on the original owner before declaring the said land as fragment and therefore the transfer of land in favour of the petitioner was not void. In view of this order of the Dy. Collector, Baroda, possession of the land was restored to the petitioner on July 18, 1986 by the Mamlatdar, Baroda. Feeling aggrieved by the order of the Dy. Collector, which was passed on June 20, 1986 the respondent no.1 from whom the petitioner is alleged to have purchased the land, preferred Revision Application No. SRD-144 of 1986 before the State Government. The State Government disposed of 2 revision applications i.e. one filed by the petitioner as well as another filed by the respondent no.1 by common order dated November 10, 1987. By the said order the State Government has remanded the matter to the Collector for deciding the same afresh in the light of the observations made therein giving rise to the present petition.

4. Mr.M.I.Patel, Ld. Counsel for the petitioner submitted that no notice was issued to the petitioner before declaring the land as fragment under the provisions of the Act, and therefore the impugned order deserves to be set aside. It was claimed that since 1965 the petitioner is in possession of the land in question and therefore after lapse of long period of about 17 years, proceedings under the provisions of the Act could not have been initiated. Ld. Counsel for the petitioner asserted that the land in question is an irrigated land and more than 20 gunthas in area as a result of which it could not have been treated as fragment within the meaning of the Act and therefore the petition should be allowed. What was stressed was that in any view of the matter the respondent No.1 should have been directed to repay the amount of sale consideration to the petitioner with interest and therefore the impugned order should be set aside.

5. Mr.S.K.Bukhari, Ld. Counsel for the respondent no.1 submitted that oral transfer of land in favour of the petitioner being void, the petition filed by the petitioner is not maintainable and should be accordingly dismissed. It was stressed that by entry no.833 the land was entered as fragment land in the record of rights and as the transfer of the land in favour of the petitioner was contrary to the provisions of the Act, the Revisional Authority was justified in setting aside the order of the Collector and in remanding the matter to the Collector for deciding it afresh in the light of the observations made in the said order. It was also pleaded by the

Learned Counsel for the respondent no.1 that before the mutation of entry no.833 in the record of rights, the respondent no.1 being the original owner was served with the notice and therefore the said entry was legal and valid. What was emphasized was that the State Government has directed the Collector to decide the matter afresh after hearing the parties and therefore the just order of remand should not be interfered with by the Court in the present petition which is filed under Article 227 of the Constitution of India.

6. Mr.S.T.Mehta, Ld. AGP submitted that after taking into consideration the relevant factors of the case, the State Government has remanded the matter to the Collector for fresh decision and therefore the order of remand should be upheld by the Court.

7. I have heard the learned counsel for the parties. I have also taken into consideration the relevant documents which are produced by the petitioner on the record of the petition. This petition under Article 227 of the Constitution is directed against order of remand. The reasons as to why remand was necessitated are mentioned on internal page four of the impugned order. Order of remand can hardly be interfered with in view of the decision of the Supreme Court in Mohd. Yunus V. Mohd Mustakali and others reported in AIR 1984 SC 38. It is not necessary for me to express any view on the points canvassed by Learned Counsel for the parties because the Collector will have to decide all the points which may be raised by the parties before him.

8. On overall view of the matter, it cannot be said that any error is committed by the Revisional Authority in remanding the matter to the Collector for deciding the matter afresh after giving opportunity to the parties of being heard. Therefore, the present petition which is filed under Article 227 of the Constitution of India is liable to be dismissed.

9. For the forgoing reasons, the petition fails and is dismissed. Rule is discharged with no orders as to costs. Adinterim relief granted earlier is hereby vacated. It is clarified that the parties would be entitled riase all points permissible under the law the same shall be decided by the Collector in accordance with law.

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